

2004 SEP -9 A 10:01

**AGENDA ITEM**

For Meeting of 9-9-04

**SUBMITTED LATE**

**MEMORANDUM**

To: The Commission

From: Ellen L. Weintraub, Vice Chair

Re: Agenda Document 04-83  
Draft AO 2004-33

Page 5, line 12: Replace "appears to apply" with "applies".

Page 7, line 4 - 5: Replace "does not make any determination as to whether" with "determines that"

Page 9, line 10 - 15: Delete

Page 9, line 10: Insert:

"With respect to Representative Kelly, the Commission concludes that the Representative's participation in the communication as described in your request would constitute coordination under 11 C.F.R. 109.21 and, if televised in the 19<sup>th</sup> Congressional District of New York 120 days or fewer before an election, would constitute a coordinated communication. Furthermore, because the requestor concedes that it is an entity that would otherwise be prohibited from making a contribution to the candidate, Ripon would be prohibited from paying for the creation or broadcasting of the described communication. 11 C.F.R. 109.22.

The requestor states that Ripon would pay for the ad, which would meet the payment source requirement for coordination. Request at 2. Furthermore, the question presented presupposes conditions that would meet the content standard, by conceding that Representative Kelly is a clearly identified candidate for federal office, and asking explicitly whether this ad could be run in her district 120 days before an election. 11 C.R.F. 109.21(c)(4).

Additionally, the Commission concludes that the ad meets the conduct standard because the candidate is "materially involved" in a decision regarding one or more listed aspects of the creation, production, or distribution of a communication. 11 C.F.R. 109.21(b)(2). The requestor states: "Throughout the production process and following production, Rep. Kelly retains the right to approve or edit the script and to approve of Ripon's use of the message." Request Supplement at 3. The Commission has previously

stated that approval of a script for an advertisement is sufficient to constitute material involvement: "To suggest that a candidate may personally approve the content of an advertisement without satisfying the conduct standard in 109.21(d)(2) would be to obviate that section of the regulations." Advisory Opinion 2003-25. See also Advisory Opinion 2004-1."

Page 11, line 12: Replace "any use of these terms" with "the phrase "Republicans in Congress" is a reference to the Republican Party and".

Page 11, line 13: Delete "In contrast, your contention that "Republicans in Congress" refers not to a political party but merely to a class of Representatives who "happen to be Republican" would invite circumvention of the Act. Accordingly, the Commission concludes that "Republicans in Congress" is a reference to the Republican Party and therefore satisfies the portion of the fourth content standard set forth in 109.21(c)(4)(i)."